

SECTION 1. Legislative Intent

"Junk Yard"

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SECTION 1: LEGISLATIVE INTENT

By the adoption of the local law of the town board of the town of Smithville declares its intent in so doing to be to regulate, control, and license the activities or businesses known as auto "graveyards", junk yards, second-hand parts, collection areas, the processing of used metals for resale and the dumping, storage and disposal of waste, second-hand or used materials of whatever composition. The said town board hereby declares that such activities or businesses can constitute a hazard to property and persons and a public nuisance. Such materials may be highly flammable and sometimes explosive. Gasoline tanks on old or junk motor vehicles often contain, in some quantity, combustible gasoline, the engine and other parts of such motor vehicles and frequently covered with grease and oil, which is also flammable. The tires, plastic seats, top and other elements of such motor vehicles are also inflammable. Batteries and other elements of such motor vehicles can contain acid and other matter potentially harmful as well as sharp metal or glass edges or points from which humans can receive serious cuts, abrasions, and wounds. Such motor vehicles can constitute attractive nuisances to children and certain adults, thereby endangering human life. The presence of such junk yards, even in areas zoned for business or industry is unsightly and tends to detract from the value of the surrounding land and property unless such areas and property are maintained and operated.

SECTION 2: DEFINITIONS

As used in this local law the term:

PERSON: Shall mean an individual, an association, a partnership, a corporation.

AUTO AND/OR MOTOR VEHICLE: Shall mean all vehicles, and shall include but not be limited to passenger auto, truck, tractor-truck, trailer, bus, motorcycle, or other vehicle, however propelled, as well as tractors, bulldozers, machinery. And equipment.

JUNK YARD: Shall mean a lot, land or structure, or part thereof, used for collecting, storage and/or sale of waste paper, rags, scrap metal or disguardred material, or for the collecting, dismantling, storage, and salvaging of machinery, or where two or more unregistered, old, or second-hand motor vehicles, no longer intended or in condition for legal use on public highways, are held, whether for the purpose of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for nay such purposes of used parts o waste materials from motor vehicles, which, taken together, equal in bulk two or more such vehicles. Lack of current New York State inspection stickers on motor vehicles shall be prima facis evidence that the motor vehicle is inoperative.

SECTION 3: LICENSE REQUIRED

No person shall engage in or conduct on real property within the town of Smithville either for himself, or on behalf of any person, directly or indirectly, as agent, employee, or otherwise any activity or business either for profit or for otherwise, at wholesale or retail, which involves the collection, storage, burning, dumping, disassembling, dismantling, salvaging, sorting, or otherwise of bodies, engines, or autos, or for any second-hand or used property of whatever material it is composed, or any waste material whether composed of wood, paper, cloth, cardboard, plastics, metals, stone, cement, or otherwise without first obtaining a license therefore as hereinafter provided.

SECTION 4: APPLICATION FOR LICENSE

Each applicant for a license hereunder shall execute under oath an application therefore to be supplied to him by the Town Clerk which shall contain the following information:

- A. That the applicant is over 21 years of age
- B. That the applicant is a citizen of the United States
- C. Whether he has ever been convicted of a felony or misdemeanor
- D. And such other facts or evidence as is deemed necessary to establish that the applicant is fit and capable of properly conducting the activity or business for which the license is sought
- E. A description of they type of business the person intends to conduct

- F. The nature of the materials such person intends to handle
- G. The number of employees the person intends to engage
- H. The name and address of the owner or owner(s) of the land and the nature of the right of occupancy of the applicant to use such land together with other such facts or evidence as is deemed necessary to establish the applicant's right of occupancy

At the time of making the application, the applicant shall submit to and file with the Town Clerk a suitable map, plan, or survey of the real property upon which the person intends to conduct the activity or business for which such application for a license hereunder is made, with the area of such real property which it is proposed to use for such purpose, the location of the fence required hereunder indicated thereon as well as the location of any building on such land and the location of any streets or highways abutting or passing through such land and the location of any water, septic, sewer, or gas mains or tanks or laterals of such land or available thereto, as well as the general drainage pattern of the land.

In the application, the applicant shall agree that if granted the license applied for, such applicant shall conduct the activity or business pursuant to the regulations hereinafter set forth and that upon failure to do so such license may be revoked forthwith.

SECTION 5: THE LICENSE

The fee for the license is hereby fixed in the sum of twenty-five dollars (\$25.00). In the event the application is not granted, the fee shall be returned to the applicant. The Town of Smithville, in addition to the license fee, may assess the applicant with the costs of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and may make the license conditional upon payment of same.

Such license shall be placed and at all times displayed in a conspicuous place at the licensee's place of activity or business for which it is issued.

Such license shall be effective from the date of issuance until the 31st day of December of the year of such issuance after which the new application for a license must be made yearly thirty (30) days prior to the expiration of the previous license, if licensee desires to continue such activity or business.

Such license is personal with the licensee. It does not go with the title of the land nor can it be sold, assigned, or transferred.

Such license may be revoked by the town board after a public hearing thereon at which the licensee shall have the opportunity to be heard, Upon revocation of such license, the town board may require the removal of autos, parts, or other materials of the nature described herein. And in the event the same is not removed within one-

hundred eighty (180) days of the town's order for the removal, said removal may be carried out by order of the town board and the cost of such removal shall be a charge against the person holding the license immediately prior to the order of removal and the property owner, jointly.

In the event that an applicant for a license as provided herein shall have been previously been duly issued a valid and effective junk yard dealer's license, pursuant to the provisions of Article (6) of the New York State General Business Law, then such applicant shall be entitled to and allowed a credit of five dollars (\$5.00), such junk dealer's license fee actually paid by the applicant, otherwise this local law shall be fully binding upon and applicable to the holder of any such junk dealer's license.

SECTION 6: REGULATIONS

The licensee shall personally manage or be responsible for the management of the activity or business for which the license is granted.

The license must maintain an office and a sufficient number of employees on the premise to assure the proper and safe conduct of such activity or business, to minimize fire hazard therefrom and to prevent improper trespass thereon by children and others.

Before use, a new junk yard or a second-hand materials business shall be completely surrounded with a fence at least eight (8) feet in height which substantially screens and with a suitable gate which shall be closed and locked except during the working hours of such junk yard or when the applicant or his agent shall be within. Such fence shall be erected not nearer than fifty (50) feet from a public highway or residential area. All motor vehicles and parts thereof and second-hand parts stored or deposited by the applicant shall be kept within the enclosure of the junk yard, or second-hand materials business except as removal shall be necessary for transportation of same in the reasonable course of the business. All wrecking and other work on such motor vehicles and parts and second-hand materials shall be accomplished within the enclosure. Inside and adjacent to and contiguous with such fence a strip of land at least ten (10) feet in width shall be kept free of all dry grass or other growth or other combustible material so as to provide a fire lane or line around the whole area where the activity or business of the licensee is being conducted.

Any person operating a junk yard or second-hand materials business already established in said town and duly licensed pursuant to the provisions of Article (6) of the New York State General Business Law shall apply for a license hereunder within thirty (30) days after this local law becomes effective and shall comply with the provisions of this local law.

Where the topography, natural growth of timber or other considerations accomplish the purposes of this local law in whole or in part, the fencing requirements hereunder may be reduced by the town board, upon the granting of the license, provided, however, that such natural barrier conforms with the purposes of this local law.

In considering an application hereunder, the town board, among other things, shall take into account the suitability of the applicant with reference to his ability to comply with the fencing requirements and other regulations herein concerning the proposed junk yard or second-hand materials business, to any record of convictions for any type of larceny or receiving of stolen goods, or any other felony or misdemeanor and information as to the applicant's experience, financial responsibility, equipment, and any other matter within the purposes of this local law. The town board may also take into account the clean, wholesome, and attractive environment which is declared to be of vital importance to the continued general welfare of the citizens of the town of Smithville by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection, the town board may consider collectively the type of road servicing the junk yard or second-hand materials business or from which the junk yard or second-hand materials business maybe seen, the natural or artificial barriers protecting the junk yard or second-hand materials business from view, the proximity of same to established residential or recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junk yard or second-hand materials business.

The materials dealt in by the licensee shall be disassembled or dismantled by means other than by burning. They shall be piled or arranged in neat rows so as to permit easy clear passage through the area.

There shall be maintained at such place of activity or business for which a license is issued at least one (1) fire extinguisher of approved design and capacity for each 40,000 square feet of area. Each such fire extinguisher shall be hung or mounted in a conspicuous place clearly marked and available, and shall be in good working order.

When the area is not supervised by the licensee or an employee, the fence shall be locked at a secure gate in a secure manner.

Suitable sanitary facilities shall be available, connected to approved public sewers or septic tanks, for the use and convenience of employees of the licensee as well as the general public visiting the area.

The area of the licensee's activity or business shall not be used as a dump area nor as a place for the burning and disposal of junk, trash, or garbage.

The town board or any of its representatives shall be granted access to the area of the activity or business of the licensee at all reasonable hours to inspect the same for compliance herewith.

No licensee shall collect or purchase any junk, material, second-hand or used article, or second-hand or used materials of any kind from any person who is actually or apparently under 21 years of age.

Each licensee shall keep and maintain a book entry record of each article purchased or collected by him showing the time and place of the collection or purchase, the name and address of the person from whom the same was collected or purchased, and the licensee shall not dispose of, or sell, such articles purchased or collected until the expiration of five (5) days from the date of the purchase or collection. The book entry shall be kept and maintained by the licensee for one (1) year subsequent to the date of purchase, collection, and/or sale or other disposition of any item or article. Such records may be examined or inspected at any time by any number of the town board, or any of its representatives, or any peace officer.

SECTION 7: VIOLATION OF LOCAL LAW AN OFFENSE; PENALTIES THEREFORE

The owner or licensee of any place of business who commits or permits any acts in violation of any of the provisions of this local law shall be deemed to have committed an offense against such local law, and also shall be liable for any such violation or penalty therefore. Each day such violation shall continue, or be permitted to exist, shall constitute a separate violation.

For every violation of any provision of this local law, the person violating the same shall be subject to a fine of not more than one hundred dollars (\$100.00), or imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.

Conviction for any above-mentioned violation shall constitute and effect an immediate forfeiture of the license. Any person violating this local law shall be subject to a civil penalty enforceable and collectible by the town in the amount of one hundred dollars (\$100.00) by the for each such offense. Such penalty shall be collectible by and in the name of the town for each day that such violation shall continue.

In addition to the above provided penalties and punishment, the town board may also maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of such local law.

SECTION 8: REPEAL

All ordinances or local laws or regulations heretofore adopted in conflict with this local law are hereby repealed.

SECTION 9: SAVING CLAUSE

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 10: EFFECTIVE DATE

This local law shall take effect immediately.